

AN ORDINANCE

98695

**AMENDING CHAPTER 35, UNIFIED DEVELOPMENT CODE, OF  
THE CITY CODE OF SAN ANTONIO, TEXAS, BY AMENDING  
SECTION 35-344, PLANNED UNIT DEVELOPMENT DISTRICT  
TO CLARIFY THE ROLE AND RESPONSIBILITIES OF  
HOMEOWNERS ASSOCIATIONS REGARDING MAINTENANCE  
OF COMMON AREAS.**

\* \* \* \* \*

**WHEREAS**, the San Antonio City Council adopted the revised Unified Development Code (UDC) on May 3, 2001; and

**WHEREAS**, the Unified Development Code Technical Advisory Committee has recommended approval of these amendments to the UDC; and

**WHEREAS**, the Planning Commission has recommended approval of this amendment after a public hearing on the matter at which parties in interest and citizens had an opportunity to be heard regarding planning issues; and

**WHEREAS**, the Zoning Commission recommended approval of this amendment after a public hearing on the matter at which parties in interest and citizens had an opportunity to be heard; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Chapter 35, Article III, Section 35-344, Planned Unit Development District of the City Code of San Antonio, Texas is amended as follows:

**35-344      *Planned Unit Development District ("PUD")***

\* \* \* \* \*

**(i)      *Common areas and facilities***

Provisions shall be made for a property owners' association that is designated as the representative of the owners of property in a residential subdivision. The property owners' association shall have the direct responsibility to provide for the operation and maintenance of all common areas and facilities, including private streets and sidewalks, which are a part of the Subdivision. The applicant shall submit the dedicatory instrument(s) covering the establishment, maintenance, and operation of a residential subdivision. The dedicatory instrument(s) shall establish a plan for the use and permanent maintenance of the common areas/facilities and demonstrate that the property owners' association is self-perpetuating and adequately funded by regular assessment and/or special assessment to

accomplish its purposes. The dedicatory instrument(s) shall include provisions that provide the city with permission for access at any time without liability when on official business, and further, to permit the city to remove obstructions if necessary for emergency vehicle access and assess the cost of removal to the owner of the obstruction. The dedicatory instrument(s) must be approved by the City Attorney as to legal form prior to any plat recordation and shall be recorded at the same time as the plat.

"Property owners' association" means an incorporated or unincorporated association that;

- a. is designated as the representative of the owners of property in a residential subdivision;
- b. that has a membership primarily consisting of the owners of property covered by the dedicatory instrument for the residential subdivision; and
- c. that manages or regulates the residential subdivision for the benefit of the owners of property in the subdivision.

"Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or other similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations.

"Property owners' association" means the designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic association," "civic club," "association," "committee," or similar term contained in the dedicatory instrument.

"Regular assessment" means an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the dedicatory instrument.

"Special assessment" means an assessment, a charge, a fee, or dues, other than a regular assessment, that each owner of property within a residential subdivision is required to pay to the property owners' association, according to the procedures required by the dedicatory instrument, for:

- a. defraying, in whole or part, the cost whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;
- b. maintenance and improvement of common areas owned by the property owners' association; or
- c. other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

**(j) PUD plan**

After the PUD zoning is granted, a PUD Plan shall be submitted to and approved by the planning commission prior to approval of any plats or the issuance of any building permits or certificates of occupancy. The PUD plan shall incorporate any conditions imposed with the granting of the PUD zoning. The PUD plan shall also delineate the measures that will be taken by the developer and/or owner to disclose to buyers of properties within PUDs of the increased financial responsibilities for the cost and responsibility for the maintenance of private streets and other commonly owned facilities.

~~Adequate provision shall be made for a community association or other legal entity with direct responsibility to, and control by, the property owners involved to provide for the operation and maintenance of all common areas and facilities, including private streets and sidewalks, which are a part of the PUD. The applicant shall submit a legal instrument establishing a plan for the use and permanent maintenance of the common areas/facilities and demonstrating that the community association is self-perpetuating and adequately funded to accomplish its purposes, and providing the city with written permission for access at any time without liability when on official business, and further, to permit the city to remove obstructions if necessary for emergency vehicle access and assess the cost of removal to the owner of the obstruction. The instrument must be approved by the city attorney as to legal form prior to any plat recordation and shall be recorded at the same time as the plat.~~

**SECTION 2.** All other provisions of Chapter 35 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

**SECTION 3.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

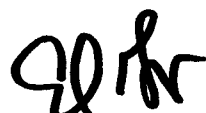
**SECTION 4.** Notice of these changes to the Unified Development Code shall not require the publication in an official newspaper of general circulation in accordance with Chapter 35, Article IV, Division 1, Table 403-1.

**SECTION 5.** The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing code.

**SECTION 6.** This ordinance shall become effective January 18, 2004.

**PASSED AND APPROVED** this 8<sup>th</sup> day of January, 2004.

ATTEST:   
City Clerk

  
M A Y O R  
EDWARD D. GARZA

APPROVED AS TO FORM:   
City Attorney